



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/168864

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 21, 2015, at Wausau, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Child/Adolescent Day Treatment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] RN, CP, CPC

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.

2. On or about June 9, 2015, the petitioner with his provider, [REDACTED], requested Child/Adolescent Day Treatment Services (CADT) five hours a day, five days a week. Those services were to begin June 19, 2015.
3. The respondent denied the prior authorization request on August 12, 2015, stating, in part that mental health services are not coverable for individuals diagnosed with developmental disorders and co-morbid behavioral and social difficulties.
4. The petitioner is an fifteen-year-old boy diagnosed with disruptive mood dysregulation disorder and anxiety disorder.
5. The respondent previously received MA authorized CADT services from March 18, 2015, through June 18, 2015.
6. The petitioner's providers have identified the possibility that petitioner may also relate to autistic spectrum disorder.

DISCUSSION

The petitioner and his provider, [REDACTED], seek authorization for Child/Adolescent Day Treatment Services. The respondent denied the request because the services are allegedly for a pervasive development disorder, i.e., autistic spectrum disorder.

The Division indicates that this a "HealthCheck—Other Service" covered under Wis. Admin. Code, § DHS 107.22(4), a catch-all category applying to any service described in the definition of "medical assistance" found at 42 USC 1396d(a). When determining what law to apply, one looks first to the one that most specifically covers the situation. Day treatment mental health services for children under 18 are specifically covered by Wis. Admin. Code, Chapter DHS 40. I will rely upon that provision to determine whether the petitioner qualifies for services.

To qualify for services, a child "must have a primary psychiatry diagnosis of mental illness or severe emotional disorder." Wis. Admin. Code, § DHS 40.08(3)(a). *Mental illness* is defined as a "medically diagnosable mental health disorder which is severe in degree and which substantially diminishes a child's ability to carry out activities of daily living appropriate for the child's age." Wis. Admin. Code, § DHS 40.03(16). Each child is evaluated by a psychologist or psychiatrist and has a treatment plan approved by a program. Wis. Admin. Code, §§ DHS 40.08(4) and 40.09(2)(c). Like any medical assistance service, it must be medically necessary, cost-effective, and an effective and appropriate use of available services. It must also meet the "limitations imposed by pertinent...state...interpretations." Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

"Medically necessary" is defined in Wis. Admin. Code § DHS 101.03(96m) as a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;

6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The pertinent interpretation of the requirements that must be met to receive adolescent day services is found at *Wisconsin Medicaid and BadgerCare Update* No. 96-20. It states:

Child/adolescent day treatment services are covered when the following are present:

- Verification that a HealthCheck screen has been performed by a valid HealthCheck screener dated not more than one year prior to the requested first date of service (DOS).
- A physician's prescription/order dated not more than one year prior to the requested first DOS.
- Evidence of an initial multidisciplinary assessment that includes all elements described in DHS 40.09, Wis. Admin. Code, including a mental status examination and a five-axis diagnosis.
- The individual meets one of the following criteria for a determination of "severely emotionally disturbed" (SED):
 - Is under age 21; emotional and behavioral problems are severe in degree; are expected to persist for at least one year; substantially interfere with the individual's functioning in his or her family, school, or community and with his or her ability to cope with the ordinary demands of life; and cause the individual to need services from two or more agencies or organizations that provide social services or treatment for mental health, juvenile justice, child welfare, special education, or health.
 - Substantially meets the criteria previously described for SED, except the severity of the emotional and behavioral problems have not yet substantially interfered with the individual's functioning but would likely do so without child/adolescent day treatment services.
 - Substantially meets the criteria for SED, except the individual has not yet received services from more than one system and in the judgment of the medical consultant, would be likely to do so if the intensity of treatment requested was not provided.
- A written multidisciplinary treatment plan signed by a psychiatrist or clinical psychologist as required in DHS 40.10, Wis. Admin. Code, that specifies the services that will be provided by the day treatment program provider, as well as coordination with the other agencies involved.
- Measurable goals and objectives that are consistent with the assessment conducted on the child and written in the multidisciplinary treatment plan.
- The intensity of services requested are justifiable based on the psychiatric assessment and the severity of the recipient's condition.

The respondent's primary reason for denying the request is that it contends that the petitioner's primary diagnosis is a pervasive development disorder. Treatment for pervasive development disorders is considered an habilitative as opposed to a rehabilitative service and is not covered under 42 USC §1396d(a)(13). I note however, that the cited section does not specifically bar medical assistance payment for habilitative services; rather it states that MA does cover the following services, which include rehabilitation services:

other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law,

for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

Because the statute specifically indicates that rehabilitative services (including those needed for the reduction of a mental disability) are covered, mental health services are covered if the primary component is rehabilitative, even if it includes an habilitative component. This means that funding for the petitioner's CADT depends upon the primary cause of his problems.

The respondent arrives at its conclusion that the petitioner has been diagnosed with autistic spectrum disorder through a highly selective reading of his medical file. The respondent's analysis cites a discharge summary from a Meriter Hospital physician who noted:

...We also reviewed some of the preliminary reports from psychological testing. This included diagnoses that landed towards autistic spectrum, but did not show a high level of PTSD symptoms. However all the data had not been put together yet to create a complete profile.

Exhibit 3, Attachment 1.

A subsequent psychological report found that:

[Petitioner] appeared "manic" although there are questions about whether his behaviors really manifested more related to autistic spectrum disorder. Overall, the results of this assessment certainly point much closer to a diagnosis of an autistic spectrum disorder than bipolar-like mood disorder.

Id., at Attachment 2.

Based upon these statements, the respondent concluded that the psychological testing and evaluation attributed the petitioner's anxiety symptoms, depressive symptoms, emotional reactivity, and behavioral dysregulation to the diagnosis of autism spectrum disorder. I cannot agree.

First and foremost, nowhere in the psychological report does there appear a diagnosis of autism spectrum disorder. Nor is there any writing the specifically ties petitioner's anxiety, depression or behavioral issues to autism. The closest the psychological report gets is to state that the results of the psychological assessment "certainly point much closer" to an autism diagnosis. See, Exhibit 3, Attachment 2.

In similar fashion, the inclusion of "autism spectrum disorder" in a list of diagnoses included in a Meriter Hospital discharge summary does not withstand even a minimal level of scrutiny. The doctor who included that diagnosis indicated in her medical notes that petitioner's diagnoses "landed towards autistic spectrum." See, Exhibit 3, Attachment 1. I realize that medicine is not an exact science, but I have difficulty equating "landed towards" with "has been diagnosed with." Future testing may confirm his provider's suspicions of the presence of autistic spectrum disorder. However, Taken as a whole, the preponderance of the evidence before me indicates that the petitioner's most significant diagnoses are disruptive mood dysregulation disorder and anxiety disorder rather than autistic spectrum disorder.

Given the evidence in the record, I find that the CADT service is medically necessary and will approve it.

I note to the petitioner that [REDACTED] will not receive a copy of this decision. Therefore, in order for it to receive payment for these services, the petitioner must provide [REDACTED] a copy of this decision. [REDACTED] will be required to submit a new

Prior Authorization Request, with a copy of this Decision, to receive payment for the services it has provided.

CONCLUSIONS OF LAW

The petitioner is entitled to medical assistance reimbursement for CADT services because he has established that those services are medically necessary.

THEREFORE, it is

ORDERED

That the petitioner's adolescent day treatment provider, [REDACTED], is entitled to receive reimbursement for the services requested pursuant to the June 9, 2015, Prior Authorization Request that is the basis for this action. [REDACTED] must submit its claim along with a copy of this decision and a new prior authorization form to Forward Health for payment.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

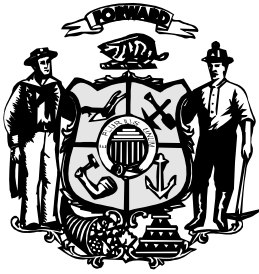
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of December, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 4, 2015.

Division of Health Care Access and Accountability

